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# **LAND REFORM AND HUMAN RIGHTS IN CONTEMPORARY ZIMBABWE: BALANCING INDIVIDUAL AND SOCIAL JUSTICE THROUGH AN INTEGRATED HUMAN RIGHTS FRAMEWORK**

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## INTRODUCTION<sup>1</sup>

“This land is your land. Don’t let them use the courts and the constitution against the masses”

(A ZANU-PF Advertisement, November 6, 2000)

Land for the land-hungry, landless or poor has emerged as President Mugabe’s centerpiece for staying in office. He has stated that it is time to settle the land question once and for all. To that end members of the war veterans’ association along with other supporters of the ruling party occupied numerous commercial farms owned by white and only white Zimbabweans. The slogan for the ruling party’s electoral platform for the parliamentary elections of June 25<sup>th</sup> and 26<sup>th</sup> 2000 was “Land is the Economy and the Economy is Land.” Land distribution and access to land has been subject to analyses and programs since Zimbabwe became independent in 1980.<sup>2</sup> In this paper we will examine conflicting land claims through the lens of a rights framework. We do so because Zimbabwe’s current government has signed several international human rights conventions<sup>3</sup> and because from its very inception Zimbabwe has been characterized by a strong judicial system, a strong administration to enforce the law and in general, traditions that can be characterized as rule by law. Zimbabwe has had an independent judiciary that has maintained a check on governmental abuses. It has been a nation where law has been taken quite seriously at all levels. Indeed, even in violating the law, the ruling party has sought to justify its actions by writing new ones.<sup>4</sup> Thus law remains of central importance even now. However, there is a difference. The President has changed policies quite rapidly without having the appropriate legislative framework in place. Thus even though laws are being written or cited they are more to permit the President to act rather than a systematic effort to change policy through the careful writing of new laws.

We are persuaded that the current political and economic crises cannot be resolved through international human rights instruments. All the same we argue that they contain guidelines and principles that will enable the next government too more fairly and equitably address

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<sup>2</sup> We hesitate to assert again the truism that there is a real need for land reform. We simply do not believe that any land reform is better than none. The proof will be in what kind of land reform, how is it enacted, and who are the genuine beneficiaries. We believe that progressive land reform requires excellent planning in coordination with the beneficiaries, good technical support and the resources that both old and new farmers will really need.

<sup>3</sup> The human rights treaties and covenants are listed in Part I.

<sup>4</sup> Some of these new laws are listed in Part III.

Zimbabwe's colonial legacy and current economic structures.<sup>5</sup> There are human rights claims currently being made against the Constitutional Amendment 16 and the new law written enacted by the Present under the Temporary Powers Act. In terms of human rights claims, only the commercial farmers have been able to bring them to the courts. Even if they were to win in court it is to be expected that court's decisions will be ignored as they have been to date.<sup>6</sup> Other groups, like women, children, commercial farm workers have not had the resources and access to the courts. Partly this is due to the nature of rights being lost, the experiences of lawyers to bring human rights cases and the lack of precedent in having international rights agreements concerning social and economic rights, such as the right to livelihood, tried in Zimbabwe courts. Almost all human rights cases in Zimbabwe have focused on civil and political rights guaranteed in the Constitution or laws. These have been brought by Zimbabwe's human and civil rights organizations. They have mainly been claims around rights of speech, association, and political freedoms in general. Women's rights claims have been focused on inheritance, maintenance rights, property rights and protection against violence. The right to equality within these areas has, however, been severely hampered by the Constitution which gives customary law a privileged position when conflicting with the equality principle. The rights discourse, if broadened to include the different rights instruments discussed below, would lead to new and different claims relating to land. These might include rights to livelihood brought by farm workers; the right of equal protection of tenure and access to resettlement land for women; the right of farm workers' children to education, health and physical security. Thus, the land invasions raise new human rights concerns not just for farm and land owners.

We will not review the large and often excellent literature on the land question in Zimbabwe<sup>7</sup> nor much of the resettlement literature. This includes a great deal of emphasis upon the historical construction of the contemporary division and strategies for greater equity. There are two serious weaknesses in the past literature. The first is that both the will and the capacity of the Zimbabwean state to carry out a fair land reform are greatly overestimated. This leads to the idea that the government has been seriously interested in land reform and resettlement in the 1990s which has not been true. Thus, Sam Moyo's, one of Zimbabwe's most outstanding researcher's on land, optimism toward government seems misplaced. Until the recent work of Moyo, Rutherford and Amanor-Wilks virtually no attention has been given to the resettlement of farm workers. However, despite the new attention to farm workers they continue to be driven from the large

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<sup>5</sup> The current crisis has multiple roots but the most immediate is that of the Presidential election in 2002. ZANU-PF was almost defeated in the parliamentary elections in June and therefore has decided to gamble its future on the fast-track resettlement program. For a discussion of the implication of human rights for water reform in general and in Zimbabwe in particular see Gleick 1999, Derman and Ferguson 1999 and Hellum 2000.

<sup>6</sup> See the Affidavit by David Hasluck to contest the constitutionality of the "Fast Track" Resettlement Program" available from the Commercial Farmer's Union Web Site. (<http://www.samara.cfu.org/>) The initial High Court order to have the War Veterans Association members leave the farms has been completely ignored. Indeed, according to the CFU affidavit the police were ordered not to enforce either the law or the court order.

<sup>7</sup> Moyo 2000 a & b, Moyo 1995; Moyo, Rutherford and Amanor-Wilks 1999, Kinsey 1998, 1999; WLSA 1999; Tshuma 1997; Maposa 1995; Potts 2000; Alexander 1993; Eicher, C and M. Rukuni 1994; Bratton 1994; Bruce 1990; Palmer 1977.

scale commercial farms. Unfortunately, despite the importance of women farm workers, and women farmers little attention has been paid to their real needs and concerns in the land reform process.

There is a series of issues revolving around land inequality and distribution that need to be resolved. These involve the classic and complex intersections of race, gender, class, and ethnicity. In the process, now termed the “Fast Track” land reform program and its rapidly changing targets, what are the legal underpinnings of this process? While it will be easy to demonstrate that the process is illegal, unconstitutional and violates human rights standards that Zimbabwe as a nation has agreed to, nonetheless the land issue will not be addressed unless other rights-based approaches are included. The paper is future oriented looking to a time when immediate political gain gives way to envisioning a more just and economically viable Zimbabwe.

The paper is divided into four parts. In the first, we examine the key international human rights conventions and treaties signed by the GOZ. In the second we explore the legal framework and policies underlying the government’s changing policies of land reform, land acquisition and resettlement. The third section will focus on land reform policy with emphasis on the current “Fast Track Program.” It is an irony that on the one hand the resettlement program has been regarded as a failure while the same type is being implemented but only a vast scale and without any infrastructural improvements. In the fourth part we explore the ramifications for the current “Fast Track” program amongst those people who should be or have been the beneficiaries of land reform. In this shortened oral version we mainly consider women and to some extent children and farm workers. The conclusion states what could be gained through utilizing a rights-based approach to such a central resource of all livelihoods.

## **PART I. INTERNATIONAL FRAMEWORKS RELEVANT TO LAND REFORM IN ZIMBABWE.**

Due to the nature of the “Fast Track” land reform program, we believe that there are a series of relevant treaties and conventions signed by the Government of Zimbabwe since 1980 that might alter the understanding and later the direction of Zimbabwe’s current land reform.<sup>8</sup> The following are the international instruments signed by the Government of Zimbabwe which have direct implications for the land reform program:

1. Universal Declaration of Human Rights, 1948
2. International Covenant on Economic, Social and Cultural Rights, 1966
3. International Covenant on Civil and Political Rights, 1966
4. The African Charter on Human and Peoples’ Rights, no date
5. International Convention on the Elimination of All Forms of Racial Discrimination, 1966
6. African Charter on the Rights and Welfare of the Child, 1990
7. Convention on the Rights of the Child, 1988

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<sup>8</sup> For an exhaustive overview of international instruments signed by the Zimbabwean Government since independence in 1980 see Zimbabwe Treaties List, Government Print, Harare.

8. Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (usually known as CEDAW or the Women's Convention)

In a change in perspective, access to basic resources such as food, health, education, water and land are now considered in recent development discourse as human rights issues.<sup>9</sup> They are included in the three general categories of rights also referred to as the three generations of human rights. These are:

1. the civil and political rights such as the right to participation, the right to protection of bodily integrity and protection of property and the right to equality and nondiscrimination.
2. the social, cultural and economic rights such as the right to health, the right to food and the right to livelihood.
3. the solidarity rights such as the right to development and the right to environment.<sup>10</sup>

A number of these human rights principles are of critical significance for the creation of a land reform program that is both equitable and economically sustainable. In this paper we focus on the instruments that have a bearing on the ongoing process of redistribution in Zimbabwe.

### **Balancing Individual Property Rights and People's Right to Livelihood**

The Zimbabwean case, like other former settler colonies in Africa, epitomizes the tension between human rights instruments that oblige the state to protect established property rights and those that oblige the state to ensure people's right to livelihood. The unequal distribution of land between white commercial farmers and black farmers gives rise to a series of complex considerations as how to reconcile individual and social justice.

The obligation to protect established property rights is embedded in Article 17 of the Universal Declaration of Human Rights which states:

1. Everyone has to right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property."

The right to livelihood is embedded in Article 11 of the International Covenant on Economic, Social and Cultural Rights which obliges the state to:

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<sup>9</sup> Influenced by Amartya Sen's capabilities framework, the rights based development approach places the individual as a holder of basic rights at the core of the process of development (Sen 1993 and 1999). This broad approach emphasizes the relevance of the whole array of human rights in development processes in general and in relation to land and water reform in particular.

<sup>10</sup> These are not fully accepted as human rights in a conventional legal sense.

"...recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions."

All states parties to the Covenant are under an obligation to take appropriate measures and specific programmes that promote the right to livelihood. With a view to specify the content of this obligation Article 11 (a) suggest measures like improvement of production methods and land reform:

"To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principle of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development an utilization of natural resources."<sup>11</sup>

A state may, depending of the consequences of an unequal distribution of land be obliged to undertake land reform. Debating the outreach of Article 11 The Third Committee was of the view that if a just agrarian system existed then the state was not obliged to undertake land reform - in such cases only the improvement of farming methods would be required (Craven 1995: 300). Land reform aimed at social justice and poverty alleviation clearly falls within the scope of basic human rights standards. Striking a balance between property as an individual and social good Article 14 of The African Charter of Human and Peoples' Rights states that:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance of the provisions of appropriate laws."<sup>12</sup>

It is an established principle in international law, that the owner of the land in the event of expropriation should be compensated. The Zimbabwean government 's refusal to pay the white farmers compensation for the land does not meet this obligation.<sup>13</sup> Agrarian reforms which, like the Zimbabwean Government's "Fast Track" program, produces a failed economy that undermines the economic foundation for basic human rights, such as the right to health, the right to education and the right to food, clearly falls short of international human rights standards. Agrarian reform with the result that agriculturalists lose their jobs represents a contravention of the right to livelihood by depriving large segments of the population of work and shelter without putting any alternative in place. The Zimbabwean Government's decision to acquire commercial farms without providing alternative sources of income and shelter for the farm workers falls short of the right to work, the right to health and the right to housing embedded in Article 6, 11 and 12 in the International Covenant on Economic, Social and Cultural Rights.

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<sup>11</sup> For a comprehensive overview of social, economic and cultural rights as human rights see Eide et al 1995.

<sup>12</sup> For a comprehensive overview of the practice of the African Commission on Human and Peoples' Rights see Ankumah 1996.

<sup>13</sup> This is discussed in Part III. Recognizing this dilemma The South African Constitution in Article 25.3 states that the amount, time and manner of compensation in the event of expropriation must be

". . . just and equitable, reflecting an equitable balance between the public interest and the interest of those affected having regard to circumstances" including the current use of the property, the history of the acquisition and use of the property and the market value."

## **Due Process and Nondiscrimination**

Article 26 of the International Covenant on Civil and Political Rights implies that land reform must be carried out without any discrimination on the basis of race, class, sex or ethnicity:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The principle of nondiscriminating is also embedded in the African Charter of Human and Peoples' Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or Women's Convention).

Specifically with regard to Article 14 of the CEDAW obliges States Parties to ensure equal treatment between men and women in land and agrarian reform as well as in land resettlement schemes.<sup>14</sup> The obligation to refrain from discrimination on the basis of race, class, ethnicity and gender in resource allocation encompasses both direct and indirect discrimination. In order to achieve real equality the CEDAW recognizes affirmative action in favor of women. Recognizing existing inequalities in marriage and inheritance law with regard to land rights, the CEDAW requires that they be based on the equality principle. Land reform should thus establish registration procedures implying that freehold or leased land should be registered in the name of both spouses.

Another significant implication of the nondiscriminating principle to race, class, gender, ethnicity and political belief is that both the properties to be acquired and the beneficiaries of the reform must be selected without any bias. Furthermore, the nondiscrimination principle calls for clear selection criteria and a transparent selection procedure. Article 2 c) of the Women's Convention obliges States Parties to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection against any act of discrimination." This implies that the structures set up to reallocate land and be in charge of resettlement programs should be conversant with the rights of women. Empirical studies on the practice of different forms of dispute resolution fora in Africa have clearly shown great differences with regard to promote the rights of women depending on the social, economic, educational and professional background of the agency.

Legal remedies, procedures and institutions are important for protecting rights. In accordance with Article 8 of the Universal Declaration of Human Rights everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him or her by the constitution or by law. The right to remedy is also embedded in Article 14 of the International Covenant on Economic, Social and Cultural Rights and Article 7 of the African Charter of Human and Peoples' Rights. It states that:

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<sup>14</sup> For the implication of Article 14 of the CEDAW with regard to land and water reform in countries like Tanzania, South Africa and Zimbabwe see Lindstrom 2000, Ik Dahl 2000, Hvidtsteen 2000 and Hellum 2000.

"Every individual shall have the right to have his cause heard." This comprises: Aa) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;"

The combination of all these instruments forms a concerted whole which taken together lays down basic principles that any land reform must incorporate in its policies and practice. We now turn to how the Government of Zimbabwe has considered and acted upon land inequalities.

## **PART II. "RULE OF LAW OPPRESSIVE TO THE POOR:" THE LAW AND POLICY FRAMEWORK ADOPTED BY THE GOVERNMENT OF ZIMBABWE**

According to the new Minister of Justice, Legal and Parliamentary Affairs Patrick Chinamasa the major problem of the judicial system is that the judges are dependent upon international donors which prevent them from finding justice.

If justice is absent, we must not expect peace. The rule of law that is based on unjust laws is founded on quick sand and will not last. (The Herald July 10, 2000)

In sum, the new Minister of Justice believes that Zimbabwe is governed by unjust laws by which he means protection of property, civil liberties and other human rights. These unjust laws and the decisions which keep them in place are to "foreign" influences. Thus, the wider political and judicial environment in which the current government is carrying out the "Fast Track" land reform is very different from in the past. Let us briefly review the law and policy frameworks adopted by the GOZ with respect to land.<sup>15</sup>

The standard history of Zimbabwe recounts that the Government of Zimbabwe was blocked from carrying out far reaching land reforms after independence in 1980 due to the restrictive constitution agreed to at Lancaster House which saw restrictions on the new state to nationalize commercial farm land in a constitution that could not be altered for a decade. Land could be bought by government but only through willing-buyer and willing-seller.

### **Removal of protection of property**

In the 90's a series of constitutional and statutory changes that weakened the protection of private property rights was enacted. The Land Acquisition Act of 1992 empowered the President to compulsorily acquire rural land where "the acquisition is reasonably necessary for resettlement for agricultural and other purposes" (S. 3). The owner was in terms of section 16 entitled to fair compensation. A Compensation Committee made up by the Secretary of the Ministry, the Director of Agricultural, Technical and Extension Services, the Chief Government Valuation Officers and three other members appointed by the Minister were established to determine the compensation payable. While the compensation issue could be appealed to the Administrative Court, no legal remedies were established with regard to the decision to designate land. This

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<sup>15</sup> It is no surprise then that President Mugabe and his other ministers have on a number of occasions expressed the view that international human rights law is a western creation that upholds status quo and as such represents an impediment to land reform that redresses the racial injustices that came about with colonialism.



reform fell short of human rights standards such as the right to a fair and impartial hearing by and an independent tribunal and the right to appeal.

A different approach was suggested by the Commission of Enquiry into Appropriate Agricultural Land Tenure Systems (LTC) , which was appointed by the President in 1993. The recommendations that were made in this document were very much in the spirit of Article 11 of the International Covenant on Economic, Social and Cultural Rights emphasizing the States Parties obligations to take steps to ensure the realization of the right to livelihood by "reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources."

The LTC observed that as of 1994

“THE resettlement program is severely underfunded and beset with planning and administrative difficulties. Government funding for the resettlement program, for example, is only equivalent to 2.4% of the defense budget for 1994-95. This has resulted in a very poor rate of resettlement since 1990, and any hope that the program will relieve communal land pressure has been lost.” (Volume II 1994: 223)

The Land Tenure Commission recommended that land settlement be a permanent long-term program.<sup>16</sup> To increase the effectivity of the agricultural sector the main recommendations were increased investment in water in Communal and Resettlement Areas.<sup>17</sup> Other recommendations as to how agricultural production could be increased in Communal and Resettlement Areas was legally secure tenure, improved credit and financial services and a comprehensive agricultural support institutions.<sup>18</sup>

While the LTC made a number of recommendations about securing tenure in the communal and resettlement areas, they did not adequately address women’s tenurial concerns nor directly respond to presentations made to them by women’s groups. The husband's matrimonial power which is at the root of the unequal distribution of land between married men and women was not questioned. The customary law that applies to registered and unregistered customary marriages gives him status as head of household and as such the right to hold property on behalf of his family. In communal areas where land use rights usually are conferred to the husband as the head of the family women's access to loans by institutions like the Agricultural Finance Co-operation (AFC) is severely hampered (Ncube 1987, ZWRCN 1998: 26). Furthermore, crops are usually marketed through boards in the husband's name and payments received in his name. Women's lack of title deed and income control has given rise to an increasing number of "harvest suicides."<sup>19</sup> In a parallel fashion, tenurial issues for women in resettlement areas were not addressed.

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<sup>16</sup> Recommendation 8.8.1 of the Commission of Inquiry into Appropriate Agricultural Land Tenure Systems (LTC)

<sup>17</sup> Recommendation 8.8.3(LTC)

<sup>18</sup> Recommendation 8.8.4 and 8.8.5.(LTC)

<sup>19</sup> In 1997 according to Kgogo Mudenge, Sunday Mail, March 2000, 153 women committed suicide in Gokwe because their husbands had squandered all the money that had been earned from the cotton crop.

The recommendations of the Commission of Enquiry were not followed up by the Constitutional Commission that was appointed by the President in 1999. The Constitutional Commission's Draft Constitution did not take any steps to secure communities or individuals whose tenure of land is legally insecure as a result of past racial discriminatory laws or practices.<sup>20</sup> The protection of private property was upheld in the event of land reform requiring compulsory acquisition of land. In its listing of factors that may be taken into account in the assessment of compensation for the compulsory acquisition of agricultural land Section 57 weakened the owner's right to compensation by adding "e) the resources available to the acquiring authority in implementing the program of land reform."

President Mugabe asserted that he would not accept the international judgement that the Zimbabwean Government had to pay the white commercial farmers compensation for land that was acquired through the occupation and conquest. He unilaterally changed the Final Consolidated Draft of the Constitutional Commission in February 2000 to make the British government responsible for the actual compensation for land of white commercial farmers. Thus, the Draft Constitution that the Zimbabwean Government presented to the people for a yes or no during the referendum in February did not give a right to compensation for land in the event of expropriation. Nonetheless the Government's Draft Constitution was rejected in the vote. Unbowed, the President presented the same language as a Constitutional Amendment in April 2000 to be able to expropriate land without paying compensation. This was adopted by Parliament.

There were two dramatic changes following the defeat of the draft constitution in February 2000. The first has just been mentioned and will be discussed below. The second was the series of farm invasions, ongoing, organized and sustained by the National War Veterans Association and at different times the ruling party, different provincial governors, and different elements of the military. This will be treated in Part IV in reference to what these invasions mean for human rights since Heather Holtzclaw will focus on these in her paper.

In Amendment 16 A of the Constitution Britain is made economically responsible to pay for land that the GOZ compulsorily acquires for resettlement. It reads:

"In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a program of land reform, the following factors shall be regarded as of ultimate importance:

- a) under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation;
- b) the people consequently took up arms in order to regain their land and political sovereignty, and this ultimately resulted in the Independence of Zimbabwe in 1980;
- c) the people of Zimbabwe must be enabled to assert their rights and regain ownership of their land;

and accordingly:

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<sup>20</sup> Final Consolidated draft 29 November, 1999.

i) the former colonial power has an obligation to pay compensation for agricultural land compulsory acquired for resettlement, through and adequate fund established for the purpose; and

ii) if the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsory acquired for resettlement.

Despite the new constitutional amendment the government could not act without enabling legislation. The actual procedures for land acquisition were still in the Land Acquisition Act of 1992. The President dealt with this by employing Section 2 of the Presidential Powers (Temporary Measures) Act which enables the President to temporarily enact legislation when parliament is not in session. Thus, President Mugabe changed the Land Acquisition Act in July of 2000 to limit compensation for improvements to the land when land is acquired for resettlement purposes. Furthermore, the right to appeal the assessment of the Compensation Committee, is in Section 29 d of this new Act limited to incidents where the Court is satisfied that the Compensation Committee did not observe the compensation principles prescribed by the Act.

For a variety of motives which have been subject to much analysis and speculation, the National War Veterans Association began an occupation of large numbers of white owned commercial farms. At first they were relatively peaceful even if clearly illegal. However in March 2000 they rapidly turned violent and the violence has continued, in different ways, in different places. At best it is only a threat. At worst it has led to many deaths, beatings, rapes, farm closures, expulsion of workers, loss of employment, agricultural production, loss of foreign investment, loss of tourism, to name only some of the consequences.

On July 28, 2000 the Commercial Farmer's Union launched a legal effort to end the ongoing farm occupations. It did so through a direct appeal to the president and by an application to the High Court which had already declared the farm occupations illegal and ordered the occupiers to vacate twice to have the farm occupations ended. The answer was swift in coming. The number of farms to be resettled as of this date was 841. On August 1, 2000 the number became a total of 3,041 with an additional 2,237 farms added. This designation of a total of 3,041 dates and their rapid proposed resettlement by the rains of this year has been called the "Fast Track" Plan. Leaving aside all legal obstacles and human rights instruments, it is dangerous and reckless to settle such large numbers of people with no planning, inadequate resources, a depleted technical staff and a government that is according to its own ministers "running on empty."

It also marked the final end of what had been left of the Donors Agreement signed in 1998 which committed several nations and the World Bank to support a major new land reform initiative but to be based on transparency, accountability, poverty alleviation and compensation.

The Commercial Farmers Union has filed an urgent appeal to have the Ministers of Local Government, Public Works and National Housing, the Minister of Rural Resources and Water Development, the Minister of Home Affairs, the Commissioner of Police and the President of the Republic as defendants. They seek to have all attempts to acquire land for resettlement after May 23, 2000 (the date of the President's use of temporary powers)<sup>21</sup> declared to be invalid since

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<sup>21</sup> President Mugabe used his powers under the Presidential Powers (Temporary Measures) Act to amend the original Land Acquisition Act. These amendments fall away in six months unless approved by

there was no reasonable resettlement plan after that date and any lands acquired after that date were done under a threat of violence, duress and illegal farm invasions.<sup>22</sup>

As a concluding note we might mention that the former minister of Higher Education and now both a minister and head of the government's land task force said that those who may not immediately be allocated land must proceed to resettle themselves and the government resettlement team would follow later to demarcate the pieces of land for them. In short, the admission government was incapable of leading or directing the resettlement but that no matter what the land had to be taken. Lastly, we will briefly describe what the GOZ says is its new land reform policy as described in the Document the "Fast Track" Land Reform Program.

### **PART III. "FAST TRACK" LAND REFORM PROGRAM**

The closest one can find to a policy for this program was a draft document released without date, signature or stationary by the government. The plan is said to rely on earlier plans including the Donors framework , the Inception Phase Framework Plan, Section 16 of the Constitution (the new land amendment) and the older guidelines for resettlement . The document refers to only 841 farms which are to be resettled as fast as possible. This involves 1 million target hectares with 30,000 benefitting families. The criteria for designation are 1. Farms under multiple ownership, 3. Farms contiguous to Communal Areas, 3. Derelict Farms, farms not being used and 4. Under-utilized farms. There is no discussion as to how one determines an underutilized farm. The settlers are to be selected from the "landless persons in the congested communal

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Parliament. They were approved on November 9, 2000 with debate blocked by the ZANU PF majority. According to the new act one-quarter of the assessed compensation for improvements must be paid when the land is acquired or soon after. No valuations have been carried out of land taken under the new "Fast Track" program.

<sup>22</sup> Apparently the government's own reversal caught the ZANU PF's official newspaper by surprise. In their July 30<sup>th</sup> edition their headlines ran "End Lawlessness on Occupied Farms: Culprits must be brought to book and Resettlement to be done in an orderly manner." They reported in of the few accounts and when the "Fast Track" Program meant only the 1,000 farms that the National Land Acquisition Committee agreed during its recent meeting in Harare that the current lawlessness on occupied farms and the haphazard allocation of land should be stopped immediately." This certainly gives credence that the President's decision was taken in anger and in response to the CFU going to court.

areas.” The priority list is as follows: successful candidates selected from the Rural District Council waiting lists (including women) in which the scheme is found, Successful candidates selected from other districts in the Province, ex-combatants and former detainees selected by the local chapter of the War Veterans Association, and other landless Zimbabweans from elsewhere in the country. There are no guidelines for what constitutes landlessness. Overall the document is thin, devoid of details and in any event is not being followed since war veterans from anywhere in the country are being given highest priority with no questions asked as to land owning, etc. Farm workers not being included, MDC members, and only white farms being taken

Indeed it is hard to believe that this latest document should be taken seriously since it is not being followed either. Indeed, the process on the ground looks more like taking what one can without regard to anyone else. The Minister of Local Government, Public Works, and National Housing, Ignatius Chombo who is also head of the Government’s Land Committee told people to go and resettle whatever commercial farm land they wanted. The government team would follow them later.<sup>23</sup> Thus, it is very difficult to envision what the situation will be like one month from now much less one year.

Thus the outcome of the government position that the law, much less all the human rights obligations, do not adhere to the government since land is not a legal issue but a political one. It was too important to be considered in the courts. Government has argued that human rights are not relevant. And where it’s clear that human rights are violated the government asserts that war veterans occupations and disruptions of farming activities were peaceful demonstrations. The police were ordered not to enforce the law.<sup>24</sup> The rule of law in commercial farming areas was suspended.

The very basis of calling land political revolves around labeling all whites as not being genuinely Zimbabwean because they are said to be supportive of the ending of ZANU PF’s government. It has been claimed by high official that “Whites” are enemies of the state, that Rhodesians are attempting to overthrow the government, that there is a conspiracy against the Zimbabwean revolution led by South African racists, MDC, English and Americans.<sup>25</sup> In the government’s view courts aren’t to be trusted and indeed to be bypassed. They are enforcing “white man’s law” and are blocking land reform. They don’t seem to connect that the new draft constitution would also have made all the government’s actions illegal and unconstitutional as well. And that according to Professor Moyo, member of the Constitutional Commission now

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<sup>23</sup> Financial Gazette, 2 November 2000, Mail and Guardian, November 7, 2000 and BBC Africa News, November 6, 2000.

<sup>24</sup> While this is difficult to definitively prove there are a series of newspaper clippings, ministerial statements and the overwhelming fact that the police did not act to remove invaders despite the court order of March 17, 2000. David Stevens was murdered after being abducted from the Police Station in Murewa. Farm workers through October have been beaten in the presence of police officers. We had a long conversation with a senior police officer in Mvurwi who told us that they (the police) had been instructed not to intervene on the farms. In the event of extreme violence, however, they were to establish a presence.

<sup>25</sup> See the effort to reveal a vast conspiracy between South Africa, U.S. UK, and Rhodesians to destroy the economy of Zimbabwe to lead the MDC to victory.

Minister of Information, Post and Telecommunication, was a black man's constitution and homegrown.

## **PART IV. THE HUMAN RIGHTS IMPLICATIONS FOR ZIMBABWE'S POOR**

### **Using the Land Invasions to implement The "Fast Track" program" of Land Reform**

There are many categories of Zimbabwe's poor since the vast majority are now classified as such. - farm workers, communal area residents, workers, workers in specific industries like tourism, manufacture of farm equipment, and many others. The consequences of Zimbabwe's economic decline is reflected in growing numbers of residents in poverty. Under these circumstances children's vulnerability to malnutrition, illness, and insecurity are dramatically intensified. The most vulnerable of all are farm workers children. As full-time farm workers lose their jobs due to "Fast Track" land reform no provisions have been made for them to continue schooling, to receive medical care, food while their parents search for new lodging, etc. This is in clear violation of Article 27.3 of the Child Convention obliging States to take appropriate measures to assist parents in ensuring the well-being of their children and in "the case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing"

Farm workers children are not the only ones, however, to be potentially harmed. Those children placed in the "Fast Track" schemes will lack schools, clinics, clean water, reasonable shelter or supplemental food for some period of time. This is a gross violation of Article 28 of the Child Convention obliging states parties to "make primary education compulsory and free" and Article 24's obligation to "ensure the provision of necessary medical assistance and health care to all children with the emphasis on primary health care." No effort has been made to ensure that children will be cared for in this time of transition. Since the economy is declining and the government has scant resources, diverting efforts to the new resettlement areas means a loss of services in the other communal and resettlement areas.

There must be a deep and profound concern for the farm workers as a whole. The "Fast Track" program ignores the farm workers' right to livelihood in terms of "adequate food, clothing and housing" embedded in Article 11 of the International Covenant on Economic, Social and Economic Rights. No consideration as to the Zimbabwean Government's obligation to "take appropriate steps to safeguard the right to work" of the farm workers that loose their jobs in terms of Article 6 of the International Covenant on Economic, Social and Economic Rights have been made. Most of their civil and political liberties have been lost. They have been excluded from the new resettlement. Because they are said to be non-Zimbabwean (migrant labor) and were not fully supportive of ZANU-PF in both the referendum and the election they have been targeted for political violence. Now they are being forced from their employment and homes without any provision made to assist them in their move nor to find them places in resettlement schemes. The leading role played by veterans increases the ongoing threat of violence toward these same workers, especially if they disobey orders to leave the farms.

## **Implications for all different groups of the Land Invasions as being the primary measure for implementing fast track Land Reform**

### **Implications for Women: "Implement CEDAW now Give Women Rights to Land"**

In this section we pay special attention to women because the empirical evidence has demonstrated that they on the one hand do most of the work in communal areas and on the other have not been able to gain land rights on an equal basis with men. Maintaining that women always have had access to land without necessarily owning, controlling or benefitting from it organizations like the Women and Land Lobby Group have called for incorporation of the CEDAW in laws and policies concerning land reform. The Women and Land Lobby Group has entered into dialogue with the Government about the "Fast Track" program claiming that 30% of the land to be distributed should be allocated to women and be registered in their own name, regardless of marital status. "Implement CEDAW Now, Give Women Rights to Land" was the claim Vice President Msika was faced with when meeting women stakeholders ranging from farm workers losing their homes and their jobs and communal farmers without secure tenure present at the Women's Lobby Group's meeting at the Sheraton Hotel in Harare 9 August 2000.

While the government has claimed to be pro-women and improving their status, laws and policies related to women's land rights leaves a lot to be desired from a human rights perspective. Article 14 g of the CEDAW states that women shall be treated on an equal basis with men in land and agrarian reform as well as in resettlement schemes. Article 16 of the CEDAW implies that land reform must ensure women's property rights during marriage, at divorce and in the event of death on an equal basis with men. To facilitate a social justice Article 4 opens up for affirmative action in favour of women. Securing women's tenurial position on an equal basis with men is closely linked to women's legal and practical responsibilities to maintain their children in terms of the Convention on the Rights of the Child. In the rural areas in Zimbabwe women's entitlements forms the backbone of their parental obligation to secure "within their abilities and financial capacities, the conditions of living necessary for the child's development" in terms of Article 27.2 of the Child Convention.

The Zimbabwean Government has in its "Accelerated Land Reform and Resettlement Implementation Plan." ("Fast Track") placed women in terms of "successful candidates including women selected from the Rural District Council waiting lists in which the scheme is found" on the top of their priority list for settler selection. The "Fast Track" program does not set aside a certain percentage of land for women. Vulnerable groups like single, divorced or widowed women are not on the list of beneficiaries which is a departure from previous Government policies concerning land allocation in resettlement areas. Although the Deeds Registry Act allows joint registration of property Vice President Msika has in a meeting with the Women's Lobby Group for Land stated that such a practice not will be pursued by the "Fast Track" program because it will undermine customary values.

The government is through its "Fast Track" program siding with men to keep women subordinate claiming that its traditional Shona customary law while actual practice, economically, socially and politically has changed. This represents a departure from the way in which people through their customs and practices are adjusting to changing social, economic and legal conditions in terms of greater equality between men and women. Empirical research has for example shown that widowed and divorced women often have been allowed to stay on the land in the event of death and divorce by resettlement officers (WLSA 1994; Kinsey personal

communication). The “Fast Track” program is also a departure from the Government's Draft Constitution from 1999 which suggested that Article 23 of the Lancaster House Constitution which gives customary law privilege when it comes to the equality principle, be abolished as incompatible with both people's wishes and the CEDAW.

Making the point that women's human rights stretches beyond equal access to land under the "Fast Track" program the Women's Lobby Group for Land has argued that adequate health services, schools, water sources, credit schemes and agricultural extension services must be put in place by the Government to ensure women's, children's and families' right to livelihood. The view that the "Fast Track" program falls short of the minimum standards provided by the International Covenant on Social, Economic and cultural Right is clearly formulated in "Communique Issued By Civil Society on the Implications of the “Fast Track” Resettlement Program..”<sup>26</sup> In this communique it is stated that

"Civil Society was also concerned that the current approach to land reform would threaten food security at household and national level as well as the country's international obligations which will have an adverse effect on the country's gross domestic product and the inflow of the much needed foreign currency."

and

"Government should make provision of input supply, farmers training and basic infrastructure should be a priority as the program might lose one of its objectives which is poverty alleviation."

The "Fast Track" program will end employment for large numbers of women farm workers, both full time and seasonal. It is proceeding with virtually no attention paid to who is already working on the farm, the number of women, the number of children, where they will be moved to or how alternate employment will be found for these women. There are also part-time or seasonal women employees who live in adjacent communal areas whose incomes will be seriously cut by loss of jobs. No account has been taken of their family dependence upon these jobs and incomes.

As a means of putting women's rights under the CEDAW into practice the Zimbabwean Government is obliged to ensure that administrative structures set up to reallocate land and be in charge of resettlement programs are conversant with the rights of women. Furthermore there is an obligation to ensure women's right to participation in the structures set up to allocate and manage land. Article 14 places an obligation on states parties to take measures ensuring that women "...participate in the elaboration and implementation of development planning at all levels." The recommendations made by Shivji et al. in their National Land Policy Framework Paper suggest that forty percent of the membership of an elected village council be women.<sup>27</sup> In practice who undertakes the selection and resolves disputes concerning land is key along with whether living in resettlement area or in communal lands. Empirical research has shown that widowed and divorced women often were allowed to stay on the land in the event of death and

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<sup>26</sup> This document was written by the Women's Lobby Group for Land and other unnamed organizations grouping themselves as “Civil Society.”

<sup>27</sup> In their model of villages they would be more self-governing under Village Assemblies. These Assemblies would be made up of all adults in a village. They would vote for a Village Council. These recommendations have not been accepted by Government.



divorce by resettlement officers (WLSA 1994; WLSA 1997, Stewart 1998 and Kinsey personal communication). In communal areas, where traditional authorities have had greater influence on land allocation registration practices has been based on patriarchal customary practices (ZWRCN 1998). Upon death and divorce women in communal areas have more frequently than women in the resettlement areas been denied access to land with reference to customary law. It is reason to believe that the removal of the resettlement officers and the strengthening of customary authorities in adjudication of family disputes and land allocation has meant a setback for women. They over-all despite some variation regard themselves as guardians of customary values and patriarchal law. And now with the "Fast Track" yet another structure is in practice influential in the allocation of land, namely the war vets. They will most likely be in political and social control of the new areas, at least until the 2002 elections. Their record of treatment of women to date has been horrendous. They are least likely candidates to favor the rights of women. Also because the war veterans as male leaders will be getting the best lands, the best housing, along with all of their other benefits this is highly discriminatory towards women.

## **CONCLUSION: SOLVING THE LAND QUESTION ONCE AND FOR ALL - UTOPIA OR NIGHTMARE?**

President Mugabe has claimed that this last push of the "Fast Track" program will solve the land question once and for all. We have demonstrated that there are a series of human rights abuses involved in this program. These abuses involve not only white commercial farmers but farm workers, communal area residents, those who were dispossessed of land, members of opposition political groups, and women in virtually all groups. In short, many of the groups who should have had highest priority to participate in a land reform program. This program is probably unique in that it deprives people who have been working on the farms for years the right to stay there and to have rights in a reform program. Estimates are that this program will displace more people than it will resettle. The assumption that the land is the economy and the economy is land has not been true for many years in the sense that Zimbabwe's rural peoples depend upon varied livelihood strategies which entail agriculture but also urban jobs, commerce, use of natural resources, etc.

The abrupt and profound disruption of the existing agricultural system will have a series of affects for peoples' livelihood strategies. People in communal lands rely not just on agriculture but on wage employment (full or part time on the commercial farms), these people exist in all categories of land (communal, resettlement and commercial). From both a human rights perspective and an economic one, land reform should not cause disruption and loss in other parts of the economy. Furthermore it remains the basic obligation of the state to protect property and to insure that all groups have secure tenure in their property. The current Zimbabwean government program has dramatically increased tenure insecurity. If all legal guarantees to property are suspended for one group, it can therefore be done to any. Land is given away and sold without respect to chiefs, local district councils, to local zoning laws, etc. In sum, it is not just the white commercial farmers whose tenure is at stake.

Women who are already prejudiced in terms of property rights will find their situations worsened. Those reforms that have taken place to enhance women's tenurial rights are not followed. The possibilities for single, widowed and divorced women to be able to use land productively are extremely limited where there are no resources. They are the groups most

dependent upon a well-supported land reform program with technical backup. They will be excluded in this “Fast Track” program. As though this is not enough, if they bring children there will be no schools, no clinics, no adequate transportation. They will be far from their families which potentially could lead to more child labor and less education for them. The rights of children are closely tied to those of women and they will both lose in this land reform process. There are many other real and potential losses in this process some of which were discussed before.

The human rights argument has, as we have shown, not had any effect on the content or the measures of implementing the "Fast Track" program. The "Fast Track" program never intended to respond to women's need of secure tenure, access to support services or right to dispose of the fruits of their work. It was designed and implemented as a response to President Mugabe's desperate attempt to stay in power. We are, however, of the view that the concerns and claims formulated by women's human rights organizations like the Women and Land Lobby Group are contributing to a human rights based way of thinking about land reform. Apart from the concern for rule of law and transparency, human rights issues were not raised at the International Donor Conference on Land Reform and Resettlement in Zimbabwe in 1998.<sup>28</sup> We welcome future land reform policies and programs informed by a human rights approach seeing civil, political, social and economic human rights as an integrated whole in order to invoke the conventions and agreements signed by the GOZ. For women it means that their use of land means security of tenure and the right to dispose of the fruits of their labor. This leaves open many paths of tenure and reform but would have prohibited the current one.

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<sup>28</sup> Communique Issued at the End of the International Donor's Conference on Land Reform and Resettlement in Zimbabwe. 9-11 September, 1998, Harare, Zimbabwe. The human rights obligations of international donor institutions such as the IMF and the World Bank has in recent years moved centre stage in human rights and development discourse (Skogly 2000).

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